

E-Filed 5/20/14

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

WILLIE WEAVER,
Plaintiff,

v.

MAINTENANCE B-3,
Defendant.

No. C 14-0346 RS (PR)

**ORDER DISMISSING COMPLAINT
WITH LEAVE TO AMEND**

INTRODUCTION

This is a federal civil rights action filed pursuant to 42 U.S.C. § 1983 by a *pro se* state prisoner against his jailors at Pelican Bay State Prison. After reviewing the complaint pursuant to 28 U.S.C. § 1915A(a), the Court DISMISSES the complaint with leave to file an amended complaint on or before July 1, 2014.

DISCUSSION

A. Standard of Review

A “complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial

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1 plausibility when the plaintiff pleads factual content that allows the court to draw the
 2 reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (quoting
 3 *Twombly*, 550 U.S. at 556). Furthermore, a court “is not required to accept legal conclusions
 4 cast in the form of factual allegations if those conclusions cannot reasonably be drawn from
 5 the facts alleged.” *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754–55 (9th Cir. 1994).
 6 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1)
 7 that a right secured by the Constitution or laws of the United States was violated, and (2)
 8 that the alleged violation was committed by a person acting under the color of state law. *See*
 9 *West v. Atkins*, 487 U.S. 42, 48 (1988).

10 **B. Legal Claims**

11 Plaintiff alleges that his constitutional rights are being violated by his having to use
 12 the same shower as fourteen other persons, another shower having been broken for 3 months.
 13 These allegations do not contain sufficient factual matter to state a claim for relief. While the
 14 Eighth Amendment guarantees an inmate's right to maintaining personal hygiene, *see*
 15 *Toussaint v. McCarthy*, 597 F. Supp. 1388, 1411 (N.D. Cal. 1984), plaintiff has failed to state
 16 any specific facts that having to share a shower with many others prevents him from enjoying
 17 this right. Plaintiff also has failed to allege any specific facts indicating deliberate
 18 indifference, which entails a showing that a prison official knows that a prisoner faces a
 19 substantial risk of serious harm and disregards that risk by failing to take reasonable steps to
 20 abate it. *See Farmer v. Brennan*, 511 U. S. 825, 837 (1994). Also, plaintiff needs to name
 21 specific persons responsible for the alleged acts, and what specific actions these persons took
 22 or failed to take. Listing “Maintenance B-3” as a defendant is not sufficient.

23 Accordingly, the complaint is DISMISSED with leave to amend. Plaintiff shall file an
 24 amended complaint on or before July 1, 2014. The first amended complaint must include the
 25 caption and civil case number used in this order (14-0346 RS (PR)) and the words FIRST
 26 AMENDED COMPLAINT on the first page. Because an amended complaint completely
 27 replaces the previous complaints, plaintiff must include in his first amended complaint all the
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1 claims he wishes to present and all of the defendants he wishes to sue. *See Ferdik v.*
2 *Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). Plaintiff may not incorporate material from
3 the prior complaint by reference. Failure to file an amended complaint in accordance with
4 this order will result in dismissal of this action without further notice to plaintiff.

5 It is plaintiff's responsibility to prosecute this case. Plaintiff must keep the Court
6 informed of any change of address by filing a separate paper with the clerk headed "Notice of
7 Change of Address." He must comply with the Court's orders in a timely fashion or ask for
8 an extension of time to do so. Failure to comply may result in the dismissal of this action
9 pursuant to Federal Rule of Civil Procedure 41(b).

10 **IT IS SO ORDERED.**

11 DATED: May 20, 2014


12 RICHARD SEEBORG
13 United States District Judge
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